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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
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13 JOSEPH MIZZONI,) 3:11-cv-00358-HDM-WGC
14 Plaintiff,)
15 vs.) ORDER
16 STATE OF NEVADA, et al.,)
17 Defendants.)
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19 Before the court is the report and recommendation of the
20 United States Magistrate Judge (#27). In the report and
21 recommendation, the magistrate judge recommends that this court
22 enter an order granting in part and denying in part, the
23 defendants' motion to dismiss (#14). Both plaintiff and defendants
24 objected (## 28, 29).

25 The court has considered the pleadings and memoranda of the
26 parties and other relevant matters of record. It has made a review
27 and determination in accordance with the requirements of 28 U.S.C.
28 § 636 and applicable case law. Based on this review, the court

1 hereby adopts and modifies the report and recommendation as
2 follows:

3 Defendant Dr. Robert Bannister's motion to dismiss for failure
4 to state a claim is **DENIED**;

5 Defendant E.K. McDaniel's motion to dismiss for failure to
6 state a claim is **GRANTED WITH LEAVE TO AMEND**;

7 Defendant Bannister's motion to dismiss on qualified immunity
8 grounds is **DENIED**;

9 Defendant Bannister's motion to dismiss plaintiff's official
10 capacity claim for monetary damages is **GRANTED**;

11 Finally, the magistrate judge's recommendation that defendant
12 Dr. Kent Robertson, improperly named as Mr. Robinson, be dismissed
13 pursuant to Rule 4(m) is **DENIED**. The court granted the plaintiff's
14 oral application to amend the complaint to correct the spelling of
15 defendant Robertson's name. (#50). Defendant Robertson was served
16 with a copy of the summons and the complaint, and has accepted
17 service and filed an answer (#48).

18 **IT IS SO ORDERED.**

19 DATED: This 23rd day of August, 2012.

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21 UNITED STATES DISTRICT JUDGE
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